IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

CRL.A.No. 1641 of 2007()

AGAINST THE ORDER IN CRLP.648/2007 Dated 05/09/2007
CC.1720/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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APPELLANT: COMPLAINANT:

K.L. JOHNSON, S/O. LEEN D'CRUZ,
NIRMALA SADANAM, KARIKKUZHY, PADAPPAKKARA,
MULAVANA, KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: ACCUSED & STATE:

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1. S. JASCENTHA,
P.D. TEACHER, GOVERNMENT M.V.G.H.S. PEROOR,
KOLLAM DISTRICT (FROM PERINJARAVILA VEEDU,
PERAYAM, MULAVANA P.O., KUNDARA, KOLLAM).

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2-BY P.P.SRI. PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.1641 OF 2007

Dated this the 19th day of September, 2007.

JUDGMENT

This appeal is filed against the order in C.C.No.1720/2004 on the file of the Judicial Magistrate of First Class-I, Kollam. When this appeal came up for admission today, it is noted by this Court that the order impugned though has been passed under Section 256(1) of the Code, it is discernible from the order that the appellant/complainant had not taken steps to serve notice to the 1st respondent. If so, the magistrate is not empowered to acquit the accused, but the complaint itself can be dismissed under Section 204 (4) of the Code of Criminal Procedure. The order impugned is not legal. Hence, this Court feels that serving notice to the 1st respondent will not serve any purpose. Accordingly, the appeal is disposed of at the admission stage itself.

As the trial court is not entitled to acquit the accused, the judgment of the trial court is liable to be set aside and case has to be remanded back to the trial court for a fresh consideration as per law. Accordingly, this appeal is allowed. The judgment of the trial

court is set aside and the matter is remanded back to the trial court with a direction to dispose of the same as per law. The appellant shall appear before the court on 27.10.2007.

K. THANKAPPAN, JUDGE.

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